



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**MEMORANDUM**

**TO:** The Commission

**FROM:** Commission Secretary's Office 

**DATE:** January 13, 2016

**SUBJECT:** Comments on Draft AO 2015-14  
(Hillary for America)

**Attached are late submitted comments received from Mr. Marc Elias and Ms. Jacquelyn Lopez, requestor's counsel. This matter is on the January 14, 2016 Open Meeting Agenda.**

**Attachment**

January 12, 2016

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The Honorable Matthew S. Petersen, Chairman  
Federal Election Commission  
999 E Street N.W.  
Washington, D.C. 20463

**Re: Advisory Opinion 2015-14 (Hillary for America II)**

Dear Chairman Petersen:

We submit these comments on behalf of Hillary for America (“HFA” or the “Campaign”) to urge the Commission to reject Draft Advisory Opinion A and Draft Advisory Opinion B (collectively, the “Drafts”) in Advisory Opinion Request 2015-14 (the “Request”), and instead adopt an alternative draft.

Both Drafts deny the ability of DePauw University to provide the Hubbard Center Stipend (the “Stipend”) to Ms. Houghtalen for her general campaign work based on an overly broad read of 52 U.S.C. § 30101(8)(A)(ii) and 11 C.F.R. § 100.54. In reconsidering the Drafts, we urge the Commission to adopt the prudent and reasonable position that the provision of an educational stipend by an accredited university organized as a 501(c)(3) corporation, as part of a bona fide and generally administered academic program, falls outside the scope of a prohibited corporate contribution.

As a section 501(c)(3) organization, DePauw University is prohibited by the Internal Revenue Code from participating or intervening in any political campaign on behalf of or in opposition to any candidate for public office.<sup>1</sup> In other words, DePauw University is barred from spending a single penny on activity that the Internal Revenue Service (“IRS”) deems electoral in nature. To ensure compliance with this requirement without chilling the core educational activities of universities, the IRS has recognized since the 1970s that a university organized as 501(c)(3) corporation may permissibly support its students’ engagement in political activity as part of its bona fide academic functions without the university itself participating or intervening in a political campaign.<sup>2</sup> In reaching this conclusion, the IRS essentially read an intent requirement

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<sup>1</sup> See 26 U.S.C. § 501(c)(3); 26 C.F.R. § 1.501(c)(3)-1(e)(3)(iii).

<sup>2</sup> See e.g., Rev. Rul. 72-512, 1972-2 C.B. 246 (a university did not participate in a political campaign by providing a course through which its students worked on political campaigns as the university did not influence the students in their choice of candidate or control the students’ campaign work, but rather made the program available “solely for the purpose of improving or developing [each] student’s knowledge and skills”); Rev. Rul. 72-513, 1972-2 C.B. 246 (a university did not participate in a political campaign by providing facilities, financial support and faculty advisors for a campus newspaper that published students’ editorial opinions on political matters as the editorial statements

into its political participation prohibition to make a natural distinction between a university facilitating the independent political activity of its students through bona fide academic programs and the direct participation by the university in a political campaign.

The Request raises for the Commission the same issue faced by the IRS over forty years ago: how to sufficiently limit direct corporate participation in elections without unnecessarily curbing bona fide educational activity. Requestor merely asks that the Commission interpret its regulations, as the IRS does, to distinguish between bona fide educational programs and intentional participation in a political campaign.

Accordingly, the Commission should find that the Stipend is not being offered to Ms. Houghtalen with an intent to compensate her for personal services, but rather merely as an educational resource provided pursuant to a bona fide academic program of DePauw University. The University's motivation in administering the Hubbard Center Summer Internship Grant Program (the "Program") is purely educational: to support its students in obtaining experiential learning experiences that will prepare them with the skills they need to be competitive in today's job market.<sup>3</sup> Moreover, every application submitted to the Program for consideration is evaluated using the same fixed Scoring Rubric,<sup>4</sup> which is designed to measure the value of the educational experience provided by the particular internship independently chosen by each applicant. The fact that an internship opportunity is with a political campaign is not a relevant factor in the Rubric. While some of the criteria used in the Scoring Rubric are subjective in the sense that the evaluators enjoy discretion in determining scores, there are sufficient objective guidelines in place to prohibit the evaluators from using the Rubric to direct grants in accordance with partisan political considerations.

The Commission has long held that a corporation may offer discounts to political committees based on objective criteria that do not consider whether the recipient of the discount is a political committee.<sup>5</sup> That is precisely how the Scoring Rubric functions. And, as we described above, IRS regulations *mandate* that it function in this way. If DePauw were to take electoral factors into consideration in awarding the grants, it would be in danger of forfeiting its coveted tax-exempt status.

Finally, for the same reasons outlined above, the Commission should similarly hold that the Stipend does not otherwise constitute a prohibited corporate contribution, as it does not fall within the scope of: "any direct or indirect payment . . . or anything of value . . . to any candidate . . . in connection with any election [to federal office]" or any "gift, subscription, loan, advance,

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were expressions of student opinion made pursuant to their bona fide participation in the academic programs and academic-related functions of the educational institution).

<sup>3</sup> See Comment on the Request by Christine Munn (Nov. 29, 2015).

<sup>4</sup> A copy of the Scoring Rubric is available in Appendix B of the Request.

<sup>5</sup> See e.g., FEC Adv. Ops. 1987-24 (Hyatt); 2004-06 (Meetup); 2004-18 (Lieberman).

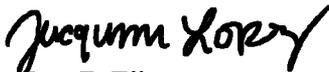
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or deposit of money or anything of value made by any person *for the purpose of influencing any election for Federal office.*"<sup>6</sup>

We therefore respectfully request the Commission to find that DePauw University, an accredited academic institution and 501(c)(3) corporation, may permissibly provide the Stipend to Ms. Houghtalen as a part of the general administration of a bona fide academic program that operates solely to support the independent educational activity of its students. In so holding, the Commission will provide a structured mechanism for accredited universities to support their students' educational goals without opening the door to direct corporate participation in federal elections. This prudent approach will sufficiently protect the regulatory goals of the Commission while also preventing the undue harm that will result from the adoption of either Draft Opinion.

The Commission has no regulatory interest in placing a financial barrier in front of students of ordinary means who wish to obtain a valuable educational experience. Unpaid internships are increasingly becoming a necessary extension of all students' formal education. The Commission should think twice before asserting the authority to disproportionately inhibit this experience for diverse students of color who come from socio-economically disadvantaged backgrounds.

Very truly yours,



Marc E. Elias  
Jacquelyn K. Lopez  
Counsel to Hillary for America

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<sup>6</sup> 52 U.S.C. §§ 30118(b)(2); 30101(8)(A)(i) (emphasis added).